

Present were: Brown (Chair); Magenheim (Clerk); McDonough and Boness, Members; Oltman, Bordonaro and Wilson (Associate Members).

The meeting opened at 6:43 p.m.

Petition No.: 4047

Premises affected: 138 Chandler Rd

Petitioner: New Cingular

Members: Brown, Magenheim, Boness, McDonough, Oltman, Bordonaro, Wilson

Petitioner's attorney had submitted a written request to withdraw the petition without prejudice. No one was present on behalf of the petition. McDonough made a motion to allow the request to withdraw without prejudice. Boness seconded the motion and the Board voted unanimously to allow the withdrawal without prejudice.

Petition No.: Z-14-9

Premises affected: 2 Elm Square

Petitioner: Musgrove, LLC

Members: Brown, Magenheim, Boness, McDonough, Oltman, Bordonaro, Wilson

Petitioner requested to continue the hearing without opening it to the April meeting. Oltman made a motion to continue the hearing without opening subject to the receipt of an extension. McDonough seconded the motion & the Board voted unanimously to continue the hearing without opening it to the April meeting subject to receipt of an extension.

Petition No.: 3952 / HAC12-04

Premises affected: 30 Shattuck Road

Petitioner: Hanover

Members: Brown, McDonough, Boness, Magenheim, Oltman [Also present was Carol McGravey; Town Counsel]

Brown gave a background on the case and noted for the record that this is not a public hearing. Attorney John Whitten, of Huggins & Whitten, representing Eisai disagreed with Brown that a public hearing is not needed. He stated that it is required, as well as notification of abutters. He urged the Board to let the 30-day clock expire on the appeal period and to let the HAC's decision stand. McDonough then made a motion to issue the comprehensive permit to Hanover as set forth in the draft circulated in advance and in compliance with the HAC's order. Magenheim seconded the motion and the Board voted by roll call:

McDonough – aye

Boness – aye

Magenheim – aye

Oltman – aye

Brown - aye

Petition No.: Z-13-109

Premises affected: 76 Haverhill St

Petitioner: Anne Marie & Associates

Members: Brown, McDonough, Oltman, Wilson

Bill Buck, manager / representative, gave an overview of the changes to the plan based on the Board's requests at the prior two hearings. There was no one else present to speak on the application. Oltman made a motion to waive a site view & close the public hearing. McDonough seconded the motion & the Board voted (4-0) to waive the view & close the hearing. The Board then proceeded to deliberate.

Brown feels the proposed single family dwelling can be constructed by special permit under section 3.3.5, that it is not more detrimental with the condition that the house be constructed in conformance with the plot plan & architectural plans submitted and that section 3.3.7 is not applicable and that a variance from section 4.1.2 is moot. McDonough made a motion to grant the special permit under section 3.3.5 with the aforementioned conditions, to find that a special permit under section 3.3.7 is not applicable and to deny the requested variance from section 4.1.2 as moot. Oltman seconded the motion & the Board voted (4-0) to grant the special permit. Brown will write the decision.

Petition No.: Z-14-14

Premises affected: 13 Carisbrooke Street

Petitioner: Ackerman

Members: Brown, Magenheimer, McDonough, Oltman, Bordonaro, Rechisky and Wilson

Robert Ackerman & his contractor represented the request for a variance from Art. VIII, Section 4.1.2 &/or for a special permit under Art. VIII, Section 3.3.5 to construct a 4'x4'7" addition that will not meet the minimum side yard setback. The addition will expand an existing 1st floor bathroom to create a full bath for their growing family. The proposed and existing side setback is 13.5'. The addition will be on footings and no closer to the side lot line than the existing house. The Board discussed the orientation of the house on the lot; slightly skewed and depicted with an existing 13.4' setback while the proposed is 13.5'. The addition may be even closer due to the house's orientation. There were no other questions or comments from the Board or the public. McDonough made a motion to waive the site view & close the public hearing. Rechisky seconded the motion & the Board voted (8-0) to waive the view & close the hearing. Chair Brown designated Rechisky, McDonough & Boness as alternates.

The Board then proceeded to deliberate. Oltman noted that the small addition will not increase the non-conformity. Brown pointed out that the house, built in 1910, predates the zoning bylaw, and is therefore a pre-existing, non-conforming structure. The addition will increase the building envelope within the side yard and therefore it will increase the non-conformity. It is in conformance with the neighborhood, however. Bordonaro made a motion to grant a special permit under Art. VIII, Section 3.3.5 to construct the addition in conformance with the plans submitted and to deny the requested variance from Art. VIII, Section 4.1.2 as moot. Magenheimer seconded the motion & the Board voted (5-0) to grant the special permit with conditions & deny the variance as moot. Bordonaro will write the decision.

Petition No.: Z-14-15

Premises affected: 12 Tiffany Ln

Petitioner: Cavanaugh

Members: Brown, Magenheimer, McDonough, Boness, Oltman, Bordonaro, Rechisky, and Wilson

James Cavanaugh, owner, & Bernie Paquin, Engineer from Dana Perkins, presented the petition to construct additions / alterations within 50' of a water body that is in the Watershed Protection Overlay District (WPOD). The existing home was built approximately in 1973-76. The requested variance from Art. VIII, Section 8.1.6.5 is for a proposed 2-story addition (44'x16') will be 37.8' from the wetlands. The existing home is 46.3' from the wetlands. They have filed a Notice of Intent with Conservation Commission, which has been continued pending ZBA action. There will be no grade change. Paquin explained that the proposed foundation is directly behind the existing foundation with the all-season

room on piers. Brown informed the petitioner that if the Board were to grant a variance, they need to determine that the proposed work is not a detriment to the water supply. However, the Board needs Conservation Commission's input prior to voting. Magenheim asked for updated plans. Brown voiced his concern over the foundation, run-off/drainage, increased impervious area, and grading. There being no other questions from the Board or the public, Rechisky made a motion to continue the hearing to 4-3-14 in order to get input from Conservation. Magenheim seconded the motion & the Board voted (8-0) to continue the hearing to 4-3-14. Brown asked for an extension of time for the Board to act on the variance. Cavanaugh agreed.

Petition No.: Z-14-113

Premises affected: 3 Durham Drive

Petitioner: Enman

Members: Brown, Magenheim, McDonough, Boness, Oltman, Bordonaro, Rechisky, and Wilson

Charles Enman represented himself & his wife, Andrea, in their request for a special permit under Art. VIII, Section 3.1.3.F.4 for the continued existence of a family dwelling unit to be occupied by his mother-in-law, Barbara Biondi. Enman explained that the contractor performing work at their home had indicated that he had obtained all necessary permits (a copy of building permit B-13-1010 was submitted with the application). Upon final inspection, they were informed that they needed a special permit from the ZBA before they would be able to occupy the unit. They were not given a final inspection. The unit is in the existing basement and includes a living room, bedroom, kitchen, and bathroom. There is access to/from the unit from both the exterior & from within the house. Brown explained that such special permits are issued for a 5 yr period and may be renewed prior to its expiration by application to the Board and is conditional upon the named occupant. He emphasized that family dwelling unit special permits expire upon sale of the house and/or termination of the approved occupant's use, at which time the kitchen facilities must be removed. McDonough made a motion to close the hearing. Rechisky seconded the motion & the Board voted (8-0) to close the hearing. Brown designated himself, McDonough, Rechisky, Wilson, and Bordonaro to sit on the case. The Board then proceeded to deliberate.

Bordonaro made a motion to grant the special permit under Art. VIII, Section 3.1.3.F.4 for a family dwelling unit with the conditions enumerated by Brown. McDonough seconded the motion & the Board voted (5-0) to grant the special permit. Wilson will write the decision.

Petition No.: Z-14-16

Premises affected: 97 North Street

Petitioner: Kennedy-Anderson

Members: Brown, Magenheim, McDonough, Boness, Oltman, Bordonaro, Rechisky, and Wilson

Denise Kennedy-Anderson, executrix of her father's estate, requested a variance from Art. VIII, Section 4.1.2 to allow the construction of a conforming single family dwelling on a lot that lacks the minimum required frontage. She explained that they have a buyer who asked them to obtain the variance as assurance that he'd be able to construct a house on the pork chop shaped lot. The existing garage on the lot will be razed. There was never a house on the lot. Phil Belanger, 103 North St., informed the Board that he obtained a variance to construct a house on a similar lot. Lillian Montalto, realtor for Kennedy-Anderson, confirmed that the buyer is a builder. Brown expressed concern over filing

requirements, particularly that a proposed house plan is not included, constituting insufficient information to grant relief. Kennedy-Anderson argued that paying taxes is a hardship and the buyer is not ready to design yet. The Board discussed that typically more information is presented in such cases in the form of a plot plan in order to render a decision. Montalto stated that the proposed single family home would be roughly 2800-2900 sq. ft. in a central location on the rear portion of the lot. Brown noted that the lot has dimensional deficits: frontage & 80% width of frontage at the rear wall of the house. Brown suggested continuing the hearing to April in order for the petitioner to submit a site plan with a house footprint, driveway basic floor plans, and elevations. He suggested that the developer speak with the Planning staff regarding the possibility of a 1-lot subdivision. Rich Guillemette, 99 North St., a direct abutter, voiced concern with run-off impacting the underground water flow to his lot. Brown noted that the wetlands along the easterly lot boundary may require a conservation filing. He asked for wetlands to be included on the plan. Rechisky made a motion to continue the hearing to 4-3-14. McDonough seconded the motion and the Board voted (8-0) to continue the hearing.

Petition No.: Z-14-7

Premises affected: 15 Bancroft Rd

Petitioner: Town of Andover Plant & Facilities Department

Members: Brown, McDonough, Oltman, Bordonaro, and Wilson

Peter Lekacic, architect, represented the Town's request to install 2 signs for Bancroft School; one on W. Knoll Rd. & one on Bancroft Rd. Based on last month's hearing, the signs have been reduced to 2'x4' with 5" letters. The locations have not changed. Lekacic confirmed that the Bancroft Rd. sign is a 2-sided, angled sign and the W. Knoll Rd. sign is 1-sided. Tom Williams, 133 Holt Rd., reiterated his concern with the location of the W. Knoll Rd. sign being visible from the back of his house. The blue color makes it more visible, in addition to its size. He asked for it to be located closer to the school structure. Lekacic explained that the proposed location demarks the nature of the school and that landscaping includes layers of buffer screening to decrease headlight glare. Williams wants it out of his line of sight. The Board discussed the distance of the sign to the property line (20') and the option of placing it closer to the school, adding more vegetation to screen it and the dimensions on the plan being incorrect. Lekacic will revise the plan to depict a 5' sign including the sign post. They also discussed options of screening as a condition of approval, a long-term landscaping maintenance plan, and moving the sign further away to optimize screening. Williams asked for the back of the sign to be painted green to screen it better. There being no further comments or questions from the Board or the public, McDonough made a motion to waive a site view & close the hearing. Oltman seconded the motion & the Board voted (5-0) to waive the view & close the hearing.

The Board then proceeded to deliberate. Brown stated that section 5.2.8.1.b allows a free-standing sign more than 2 sq. ft. by special permit, with a maximum of 6 sq. ft. area & 4' height. In this case, a variance is required because the proposed signs are 8 sq ft. & 4.5' high, exceeding the allowed area & height. Bordonaro, McDonough, Wilson, & Oltman agreed that the signs are acceptable as drawn & located on the current plan. The Board also agreed to condition approval to include screening, but not the color of the rear face of the sign. Wilson made a motion to grant a variance from Art. VIII, Section 5.2.1.8.b with the conditions that the signs conform to the revised plans and that landscaping be maintained to screen the signs from abutters as long as the signs are installed. Oltman seconded the motion & the Board voted (5-0) to grant the variance. Oltman will write the decision.

Petition No.: Z-13-111 & Z-14-17

Premises affected: 15 County Rd

Petitioner: South Andover Development, LLC

Members: Brown, McDonough, Magenheimer, Boness, and Wilson

Attorney Kathryn Morin, representative of Gerard Welch, owner, were both present. This is a continued hearing (Z-13-111) for additions to an existing non-conforming house and a new public hearing (Z-14-17) to construct a new single family home in a different location on the corner lot. Morin explained that they are trying to address the Board's concerns from the last hearing in relation to wetlands in addition to the Board's suggestion that it may be better to raze & build anew, the latter proposal being subject to local wetland bylaws. They have deferred filing with Conservation Commission until the ZBA rules. A Conservation memo was submitted for both applications. The new house is in keeping with other in the neighborhood. Brown noted that both applications will be discussed simultaneously. Welch gave an overview of the proposals: the additions/alterations proposal has not changed. The proposal for a new house has a 24' front setback from Courtney Lane. Welch stated his preference for the new house. It is on sewer & has garage under. Vilnis Kreismanis, 17 County Rd., spoke in support. Karen Reilly, 7 County Rd, voiced concern with the effects on the ecosystem, flooding & impact on wildlife. She is not in support. Jane White, 465 S. Main St. voiced similar concerns. Attorney Morin submitted letters from two abutters which Magenheim read into the record from: Jane Minigell, 42 Boston Rd, and Ramesh Dwarakanath, 6 Courtney Lane; both in support. The location of the new house is currently lawn & trees. The Board discussed dam work in town that may decrease water and the private stream on Foster's Pond that water drains into from the neighborhood. Morin showed the Board pictures of the 3 new houses on Courtney Ln. The Board discussed the original proposal & its concern for wetlands, flooding, wildlife, and a piece-meal subdivision that has prevented Town staff from looking at the overall impact. They also discussed the jurisdictional differences between the proposals & that only one could be built. Welch emphasized that the new house is subject to the local wetland bylaw & DEP regulations. Welch explained that markers & boulders will demarcate where the lawn must be left wild.

Brown asked for public comment. Barrett McCarthy, 34 County Rd., voiced preference for the new house, as did Kreismanis. Reilly & White were unsure which they prefer. The Board voiced their preferences, with the new home being favored by more Board members. Brown reminded the Board that something will be developed on the lot & to consider the impact of both projects. Wilson made a motion to waive a site view & close Z-13-111. Boness seconded the motion & the Board voted (5-0) to waive the view & close the hearing.

McDonough made a motion to deny the special permit on the grounds that it is substantially more detrimental due to the significant increase in volume / footprint and proximity to Courtney Lane and to deny the variance with a finding that it derogates from the purpose & intent of the bylaw, especially regarding setbacks. Magenheim seconded the motion & the Board voted (5-0) to deny the special permit & variance. Brown will write the decision.

The Board then proceeded with the public hearing for Z-14-17. Brown suggested continuing the hearing in order for applicant to appear before Conservation Commission and to address this Board's concerns. He asked for a memo from Conservation Commission regarding their hearing and issues. He also asked Morin to address sections 3.3.5 & 3.3.7, as dealt with in Glidden v. Nantucket regarding reconstruction & the need to establish that it's a non-conforming lot under Ch. 40A, address how it fits Ch. 40A, Section 6 and provide a chain of title for the whole area. Wilson made a motion to continue the hearing to 4-3-14. Magenheim seconded the motion & the Board voted (5-0) to continue to 4-3-14.

The Board then discussed streamlining permits at the Inspector of Building's request to expedite as much as possible decision writing.

There being no other business before the Board, McDonough made a motion to adjourn the meeting. Rechisky seconded the motion and the Board voted (8-0) to adjourn the meeting. The meeting adjourned at 9:45 p.m.